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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the Connecticut) RM-9258
Department of Public Utility Control)
for Amendment to Rule Making)

To: The Commission

**COMMENTS OF
NORTHCOAST COMMUNICATIONS, LLC**

Northcoast Communications, LLC,¹ by its counsel and pursuant to FCC Public Notice DA 98-743 (released April 17, 1998) (the "Notice"), hereby submits these Comments in RM 9258, Petition of the Connecticut Department of Public Utility Control ("CTDPUC") for Amendment to Rulemaking. The CTDPUC requests that the Commission change its stated policy prohibiting technology-specific or service-specific area code overlays. Northcoast opposes the CTDPUC's petition, asserts that a rulemaking on the issues raised in the petition is not necessary, and respectfully requests that the Commission deny the CTDPUC's petition.

It is Northcoast's position that there have not been any relevant material changes in circumstances since the Commission issued its prior orders prohibiting service or technology-specific area code overlays in 1995 and 1996² that would necessitate a change in policy, or

¹ Northcoast holds 49 D, E and F Block broadband PCS licenses. The service areas associated with these licenses are primarily located in the northeastern United States and the Cleveland metropolitan area. As a CMRS licensee that is presently building a PCS system in Connecticut, Northcoast is directly affected by the CTDPUC's petition.

² See *Declaratory Ruling and Order, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, 10 FCC Rcd 4596 (1995) ("Ameritech Order"); *Second Report and Order and Memorandum Opinion and Order, Implementation of the Local*

overcome the fact that such service-specific proposals are inherently discriminatory.

However, given the interest that the wireless-only area code overlay concept continues to generate among various state regulatory agencies as a potential solution to numbering resource issues,³ Northcoast urges the Commission to, once again, issue a brief order reiterating that service-specific area code overlays are discriminatory and violative of the Communications Act.⁴

Northcoast is sympathetic to the difficulties faced by both federal and state regulators in developing a viable solution to pressing number conservation issues. Along these lines, Northcoast appreciates that, theoretically, service-specific overlays could have a positive impact on number conservation, number portability, and other numbering issues. However, as a matter of both law *and* policy, the fact that service-specific area code overlays may help address the number conservation issue does not change the fact that such proposals are discriminatory since they favor one class of telecommunications service providers (wireline) over another class (wireless). Under the CTDPU plan, only wireless service

Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392 (1996) ("Local Competition Second Report and Order").

³ For example, despite the FCC's specific prohibition against service-specific overlays, in addition to the CTDPU's recent order relating to a (wireless) service-specific area code overlay, Pennsylvania recently also adopted a similar order. However, Northcoast does note that the Colorado PUC recently determined that it would not proceed with a wireless area code overlay, due to the serious legal issues raised by such plans. *See In the Matter of the Application and Final Recommendation of the Numbering Plan Administrator for Relief of the 303 Area Code*, Docket No. 97A-103T, Deliberative Session, released April 13, 1998.

⁴ *See* 47 U.S.C. § 202(a) (prohibiting unreasonable discrimination in practices in connection with provision of communications service); 47 U.S.C. § 201(b) (unjust or unreasonable practices by common carriers in providing communications service are unlawful).

providers would be forced to bear the costs and inconveniences associated with implementing a separate area code in order to provide service to their customers. If the FCC were to suddenly change its technology neutral numbering policy⁵ and allow the CTDPU's wireless area code overlay plan to be implemented, both the CTDPU and the FCC would be directly favoring the wireline industry over the wireless industry in the provision of telecommunications service.

It is the CTDPU's contention that since the wireline and wireless communications industries are not presently directly competitive, service-specific overlays cannot offer one telecommunications industry an advantage over another.⁶ Northcoast disagrees with this position. Wireless area code overlays would allow wireline service providers to continue operating with the "more desirable" existing area codes, and experiencing no negative technical or financial impact, while wireless service providers would be forced to incur significant expenses associated with reprogramming existing wireless units such as phones and pagers, educating the public as to the numbering changes, and implementing the technology to make the change. Furthermore, only wireless customers would be inconvenienced by having to dial additional digits to place local calls. Clearly, this scenario "would provide particular industry segments and groups of consumers an unfair advantage".⁷

While the CTDPU may be correct that the wireless industry presently is not a substitute for wireline telecommunications service offerings, it turns logic on its head to use

⁵ See *Local Competition Second Report and Order* at ¶ 305.

⁶ CTDPU Petition at p. 10.

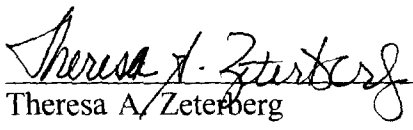
⁷ See *Local Competition Second Report and Order* at ¶ 305.

this as an excuse to allow wireless overlays. Precisely because of the fact that the two segments of the telecommunications marketplace are not yet direct competitors, the Commission should continue its prohibition against unreasonable and discriminatory numbering provisions that would impede, rather than promote, competition. In fact, the basic underlying tenet of the Telecommunications Act of 1996 is the promotion of competition in the telecommunications marketplace. At the direction of Congress, the Commission has implemented many proceedings designed to foster competition in the telecommunications industry, including competition among wireline and wireless service providers. For example, in the FCC's "CMRS Flexibility" proceeding, the Commission determined that CMRS providers may offer fixed wireless services over their wireless spectrum, and has widely touted the belief that such services could become a substitute for the fixed wireline services.⁸ Instead of *promoting* competition to incumbent wireline telecommunications service providers, service-specific area code overlays in fact would *hinder* competition, by making it difficult and costly to become a viable telecommunications service alternative.

In sum, the Commission should *once again* conclusively state that service and technology-specific area code overlays are inherently discriminatory, remain violative of the Communications Act, and for that reason alone cannot be imposed by the states as a matter of law and policy.

⁸ See *First Report and Order and Further Notice of Proposed Rule Making in WT Docket 96-6, Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965 (1996).

Respectfully submitted,
NORTHCOAST COMMUNICATIONS, LLC

By: 
Theresa A. Zeterberg
Its Attorney

COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

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